

*NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Eagle Framing and United Brotherhood of Carpenters and Joiners of America, Local No. 945, AFL-CIO. Case 17-CA-17825**

October 18, 1995

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS COHEN  
AND TRUESDALE

Upon a charge filed by United Brotherhood of Carpenters and Joiners of America, Local No. 945, AFL-CIO, the Union, on January 30, 1995, the General Counsel of the National Labor Relations Board issued a complaint on June 27, 1995, against Eagle Framing, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act.<sup>1</sup> Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 11, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On September 13, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 25, 1995, notified the Respondent that unless an answer were received by close of business on August 30, 1995, a Motion for Summary Judgment would be filed. Nevertheless, as indicated above, the Respondent failed to file an answer to the complaint.<sup>2</sup>

<sup>1</sup> On March 31, 1995, prior to issuance of the June 27, 1995 complaint, the Regional Director approved an informal settlement of the case. However, by order dated June 27, 1995, the Regional Director vacated and set aside the settlement agreement on the ground that the Respondent had failed to comply with it.

<sup>2</sup> The record does not indicate whether any previous complaints or answers were issued or filed prior to the parties' March 31, 1995

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times the Respondent has been owned by Dan Crouse, a sole proprietorship d/b/a Eagle Framing, with an office and place of business in Eldon, Missouri, and has been a contractor in the construction industry engaged in commercial construction. During the 12-month period ending February 28, 1995, the Respondent, in conducting its business operations provided services valued in excess of \$50,000 for companies, including Griffin Construction Company, which in turn performed services valued in excess of \$50,000 outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times the Builder's Association of Missouri (the Association) has been an organization composed of various employers engaged in the construction industry, one purpose of which is to represent its employer-members and other employers who stipulate to be bound to collective-bargaining agreements negotiated by the Association in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union.

About April 1, 1992, the Association and the Central Missouri Carpenters District Council (the District Council) entered into a collective-bargaining agreement (the Association Agreement) effective from April 1, 1992, through March 31, 1995.

About August 4, 1994, the Respondent entered into a contract stipulation agreement with the District Council which at all material times bound the Respondent to the terms and conditions of employment of the Association Agreement.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of

informal settlement agreement. However, we take administrative notice that the settlement form used by the parties was NLRB Form 4775, the standard informal settlement agreement, which expressly provides that approval of the settlement agreement "shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case, *as well as any answer(s) filed in response.*" (Emphasis added.) Thus, any answer that may have been filed to any prior complaint would not remain extant and would not preclude summary judgment. See *Orange Data, Inc.*, 274 NLRB 1018 (1985); *Ofalco Properties*, 281 NLRB 84 (1986); and *Signage Systems*, 312 NLRB 1115 (1993).

collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by Respondent who perform work which has historically and traditionally been performed by members of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, in the geographical area which extends to and includes the following Missouri counties: Adair, Audrain, Benton, Boone, Callaway, Chariton, Cole, Cooper, Howard, Knox, Lewis, Linn, Macon, Marion, Miller, Moniteau, Monroe, Morgan, Osage, Pettis, Putnam, Ralls, Randolph, Schuyler, Shelby and Sullivan, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act and all other employees.

About August 4, 1994, the Respondent, an employer engaged in the building and construction industry, granted joint recognition to the District Council and the Union as the exclusive collective-bargaining representative of the unit by entering into a contract stipulation with the District Council whereby it agreed to be bound by the Association Agreement with the District Council and its affiliated Local Unions for the period August 4, 1994 to March 31, 1995, without regard to whether the majority status of the District Council or its affiliated Local Unions had ever been established under the provisions of Section 9 of the Act.

For the period of August 4, 1994, to March 31, 1995, based on Section 9(a) of the Act, the District Council and the Union have jointly been and are the limited exclusive collective-bargaining representative of the unit.

Since about August 4, 1994, the Respondent has failed to continue in effect all the terms and conditions of the Association Agreement by failing to make payments to the Health and Welfare Plan and Pension Fund and by failing to deduct supplemental dues for its employees in the unit who signed a written authorization to withhold such monies.

Although the terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining, the Respondent engaged in the conduct without the Union's consent.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused since August 4, 1994, to make contractually required payments to the Health and Welfare Plan and Pension Fund, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>3</sup>

In addition, having found that the Respondent has been failing since about August 4, 1994, to deduct supplemental dues for employees who had executed authorizations to withhold such monies, we shall order the Respondent to deduct and remit union dues as required by the agreement and to reimburse Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

#### ORDER

The National Labor Relations Board orders that the Respondent, Eagle Framing, Eldon, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with United Brotherhood of Carpenters and Joiners of America, Local No. 945, AFL-CIO and the Central Missouri Carpenters District Council as the limited exclusive bargaining representative of the employees in the following unit, by failing to make payments to the Health and Welfare Plan and Pension Fund and to deduct supplemental dues for unit employees who signed a written authorization to withhold such monies, as required by the Association Agreement effective to March 31, 1995:

All employees employed by Respondent who perform work which has historically and traditionally been performed by members of the United Broth-

<sup>3</sup>To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

erhood of Carpenters and Joiners of America, AFL-CIO, in the geographical area which extends to and includes the following Missouri counties: Adair, Audrain, Benton, Boone, Callaway, Chariton, Cole, Cooper, Howard, Knox, Lewis, Linn, Macon, Marion, Miller, Moniteau, Monroe, Morgan, Osage, Pettis, Putnam, Ralls, Randolph, Schuyler, Shelby and Sullivan, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the Association Agreement, including the provisions regarding benefit fund payments and dues deductions, and make whole the unit employees and the Union for its failure to do so since August 4, 1994, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Eldon, Missouri, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>4</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with United Brotherhood of Carpenters and Joiners of America, Local No. 945, AFL-CIO and the Central Missouri Carpenters District Council as the limited exclusive bargaining representative of the employees in the following unit, by failing to make payments to the Health and Welfare Plan and Pension Fund and to deduct supplemental dues for unit employees who signed a written authorization to withhold such monies, as required by the Association Agreement effective to March 31, 1995:

All employees employed by us who perform work which has historically and traditionally been performed by members of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, in the geographical area which extends to and includes the following Missouri counties: Adair, Audrain, Benton, Boone, Callaway, Chariton, Cole, Cooper, Howard, Knox, Lewis, Linn, Macon, Marion, Miller, Moniteau, Monroe, Morgan, Osage, Pettis, Putnam, Ralls, Randolph, Schuyler, Shelby and Sullivan, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL honor the terms of the Association Agreement, including the provisions regarding benefit fund payments and dues deductions, and WE WILL make whole the unit employees and the Union for our failure to do so since August 4, 1994.

EAGLE FRAMING